

**DECISION**



15898  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Protest Against Army Contract Award]*

FILE: B-199010

DATE: January 19, 1981

MATTER OF: D-K Associates, Inc. *DLG 05842*

**DIGEST:**

1. Failure of contracting activity to send solicitation to offeror does not render award improper when there is no evidence of conscious or deliberate effort by activity to preclude offeror from competing and where contracting officer reasonably believed that adequate competition would be obtained.
2. Determination as to time which should be made available for preparation of proposals is matter of judgment properly vested in contracting agency and will not be questioned unless it appears that decision of agency was arbitrary or capricious.
3. Protest of alleged solicitation improprieties filed after closing date for receipt of initial proposals is untimely where protester knew or should have known of solicitation defects prior to closing date.

D-K Associates, Inc. protests the award of a contract by the United States Army Missile Command (MICOM), Redstone Arsenal, Alabama to the incumbent contractor under request for proposals (RFP) DAAH01-80-R-0767 for production photography and related services.

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MICOM initially issued a solicitation for these services in December 1979, but because of a price leak and a substantial change in agency requirements, that solicitation was canceled in March 1980. Offerors were advised, however, that a new solicitation for these services would be promptly issued. An announcement of the second solicitation was subsequently published in the Commerce Business Daily. The protester acknowledges having seen the announcement and claims to have submitted a written request to MICOM for a copy of the solicitation. The new solicitation was issued on April 28, but D-K Associates did not receive a copy. However, D-K Associates states it received a copy of the RFP from a competitor prior to the pre-proposal conference on May 7 which it attended. According to MICOM thirteen firms were solicited, three of which submitted proposals. D-K Associates did not submit a proposal.

D-K Associates' protest stems from the fact that it was not initially furnished a copy of the solicitation and that the RFP failed to provide adequate time for the submission of proposals by any offeror other than the incumbent contractor. In this regard, MICOM refused to extend the May 19 closing date for receipt of proposals as requested by the protester on May 12. The protester also maintains that the RFP improperly specified the Walsh-Healey Act for these services instead of the applicable Service Contract Act, thereby inhibiting the timely submission of offers and that the RFP applied the incorrect Standard Industrial Classification code, which caused an erroneous designation of the small business size standard.

While it is unfortunate that the protester did not initially receive a copy of the RFP, the solicitation of all possible offerors is not required to achieve adequate competition. Intermountain Sanitation Service, B-193239, January 19, 1979, 79-1 CPD 33; Valley Construction Company, B-185684, April 19, 1976, 76-1 CPD 266. The propriety of the procurement must be determined on the basis of whether adequate competition and reasonable prices were obtained so long as there was no deliberate or conscious attempt to exclude a potential offeror from the competition. C.C.C.I., B-184690, March 2, 1976, 76-1 CPD 147; 50 Comp. Gen. 565, 571 (1971). In this regard, we note that there is no allegation or evidence of a deliberate or conscious attempt on the part of MICOM to exclude D-K Associates from the competition.

With respect to the time made available for the preparation of proposals and MICOM's refusal to extend the due date for receipt of proposals, only limited guidance is provided by the Defense Acquisition Regulation (DAR). DAR Section III, governing procurement by negotiation, is silent on the subject. DAR § 2-202.1 (1976 ed.), which is applicable to formally advertised procurements, does provide some guidance, however. This section provides that as a general rule, bidding time shall not be less than 30 days when other than standard commercial articles or services are procured. However, that section further provides that the rule "need not be observed in special circumstances \* \* \* where the urgency for the supplies or services does not permit such delay." Further, we have observed that the determination of the date to be specified for receipt of proposals is a matter of judgment properly vested in the contracting agency, and we will not substitute our judgment unless it appears that the decision of the agency was arbitrary or capricious. 50 Comp. Gen. 565, 572 (1971).

We believe the agency had justification for allowing offerors less than 30 days for the preparation of proposals and for its refusal to extend the due date for receipt of proposals since the contracting officer appears to have reasonably determined that, under the exigent circumstances of this procurement, caused by the earlier solicitation cancellation and two sixty-day extensions that had previously been granted to the incumbent contractor, a sufficient number of sources had been solicited and that adequate competition would be obtained, particularly given the time available. We therefore do not regard the agency's refusal to grant a time extension as arbitrary or capricious.

With respect to the alleged defects in the solicitation involving the improperly specified Walsh-Healey Act and the incorrect Standard Industrial Classification, the protester knew or should have known of the improprieties when it received a copy of the RFP and in any event not later than the date of the pre-proposal conference which it attended. However, it failed to file its protest with this Office prior to the closing date for receipt of proposals.

Under our Bid Protest Procedures, protests of alleged solicitation improprieties that are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date. 4 C.F.R. § 20.2(b)(1980).

Accordingly, we conclude that the protest on these issues was untimely filed. International Technical Services, Inc., B-196011, January 18, 1980, 80-1 CPD 58; Sigma Consultants, Inc., B-194706, May 14, 1979, 79-1 CPD 350.

The protest is denied in part and dismissed in part.



For the

Comptroller General  
of the United States